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a grave charge against a persecuted or unfortunate woman as a common scold, would be strikingly ridiculous and absurd—at war with the more benign, true and enlightened sentiments of the public on the subject of punishment, and tending rather to defeat than to advance the objects of penal law, and bring the administration of justice into reproach.

Without multiplying further, or adding reasons that might be given, the judgment in this case is arrested, and the defendant discharged.

Common Pleas, Philadelphia County, Pa., 1854.

CHILLAS vs. BRETT.

Under the Act of 1845, with regard to appeals in equity, an appeal perfected, after the levy of a *fi. fa.*, or a decree, but before sale, is a supersedeas.

In Equity. Rule to show cause why a writ of *vend. exp.* should not be awarded.

The opinion of the Court was delivered by

THOMPSON, P. J.—The decree in this case was for the payment of money by the receiver. The plaintiff obtained a writ of *fi. fa.* to enforce the decree, as prescribed by the rules of Court. The sheriff levied upon the goods of the receiver, and three days after the levy, the defendant took his appeal. It is contended by the plaintiff, that the appeal taken after the levy upon the *fi. fa.*, was no supersedeas, and he moves that a writ of *vend. exponas* be awarded.

The Act of 17th of March, 1845, which regulates appeals in suits in equity, prescribes the same terms and regulations, as are provided in case of appeals from the decree of our Orphans' Court, viz: The party appealing, must give security by recognizance, make oath that the appeal is not intended for delay, and perfect his appeal within three years after the final decree. These terms being complied with, the appeal shall stay all proceedings in the Orphans' Court. In addition to a compliance with the terms and regula-

tions, required in an appeal from the Orphans' Court, the Act of 1845, further requires, that in order to secure a stay or supersedeas of execution in equity, where the decree is for the payment of money, the appellant is required to give a bond to the adverse party, in at least double the amount of the sum decreed to be paid, with two sufficient sureties, to be approved by the Court; and it declares that such appeal being so perfected, shall *stay all further proceedings* in said Court, *upon the order or decree appealed from*, and upon the subject matter embraced in such order or decree. The evident intention of the act is, that if such appeal be perfected within the period allowed for the appeal, and before the decree is performed, the decree or order shall not be enforced. The process by which decrees are usually enforced in equity, whether attachment or sequestration, cannot be proceeded with after the appeal; the entire proceeding is arrested. The adoption by the Court of the writ of *fi. fa.* as final process to execute decrees for the payment of money cannot, of course, alter the effect which the law designed to give the perfected appeal, and where such writ has not been fully executed, before the appeal is perfected, the Court can do no act by which the decree may be enforced. In this case, the levy has been made upon the *fi. fa.*, and so returned by the Sheriff. At common law, such an execution is considered executed, and a writ of error is too late to arrest the sale of the goods levied on, but undoubtedly, such sale in this case would be a proceeding upon the decree appealed from. By authorizing the *vend. exp.*, the Court would be enforcing that decree, which by the plain terms of the Act of Assembly, they have not the power to do while the appeal is pending. The rule therefore, must be discharged.

In the New-York Supreme Court.

MATHEWS vs. MATHEWS.

An exception in a grant of lands in these words, "excepting and reserving out of the said piece of land so much as is necessary for the use of a grist mill on the east side of the road at the west end of the said mill-dam," is a good exception; but until the grantor or his assigns exercise the right reserved, and builds the mill, it is not operative, and ejectment cannot be sustained.